

LYNCHBURG CITY COUNCIL

Agenda Item Summary

MEETING DATE: **October 26, 2004, Work Session**

AGENDA ITEM NO.: 8

CONSENT:

REGULAR: **X**

CLOSED SESSION:

(Confidential)

ACTION: **X**

INFORMATION:

ITEM TITLE: **City Employees Making Petition to City Council**

RECOMMENDATION: Determine the extent to which this is a concern shared by the majority of Council and provide policy guidance to staff. It is not recommended that Council adopt a policy prohibiting employee petitions to Council.

SUMMARY: During Council's retreat the issue of City employees formally petitioning Council to take some action on their behalf was raised as a concern.

In the Council/Manager form of government City employees do not work directly for the City Council. Rather, the City Manager is charged with the responsibility of hiring and personnel management. There is no established procedure whereby a grievance or any other issue raised by an employee or group of employees comes before City Council for resolution. To create a procedure giving Council some role in personnel management would be counter to the principles of the Council/Manager form of government. Accordingly, it is never appropriate for an individual employee to petition Council regarding a matter directly and solely related to his or her employment with the City. The Code of Conduct in the Employee Handbook addresses this matter as follows:

"Representing Private Interests Before City Agencies or Courts. No employee shall represent his/her own or any other private interest before any agency of the City, unless he/she is doing so as a member of a civic organization or is speaking on an issue of general public interest."

Note that this does not prohibit City employees from speaking to Council on issues of a general nature or as a member of an organization.

The City Attorney has offered the following regarding City employees participating in a group making presentations to Council regarding:

Section 40.1-61 of the State Code provides that an employer cannot require an employee to abstain from joining a labor union or a labor organization. Section 40.1-57.3 of the State Code provides that nothing in the provisions of the State Code dealing with Labor and Employment shall be construed to prevent the employees of the Commonwealth and its political subdivisions from forming associations for the purpose of promoting their interests before their employing agency.

Even though public employees can join unions and associations, Section 40.1-57.2 of the State Code prohibits local governing bodies from (i) recognizing such organizations as bargaining agents for public employees or (ii) from bargaining collectively with such organizations. Also, allowing representatives from such organizations to speak before the governing body does not constitute recognizing such organizations as bargaining agents or collective bargaining.

The First Amendment allows public employees to appear before the public body and speak on matters of public concern. A public employee does not have the right to appear before the public body to speak on a private employment issue. In the 1981 case of *Henrico Professional Firefighters v. Board of Supervisors of Henrico County* the federal courts held that since the county allowed representatives of various organizations to

address it on matters of public concern it could not refuse to allow representatives of county employees to speak. While the First Amendment allows representatives of public employees to address the public body on matters of public concern it does not require the public body to listen to or respond to such speech. The public body can simply ignore the speech.

Council can't refuse to allow representatives of City employees to appear before Council on matters of public concern. However, Council could make it clear that it is not going to listen to or respond to such speech.

From that, it would seem reasonable to expect that employee representatives may bring before City Council certain issues over which Council exercises broad control and which impact City employee groups. Budget decisions, certain policy decisions, and decisions regarding the identification of resources for employee compensation would be such areas where Council makes the final decisions. Of course, as noted by the City Attorney, Council can treat any remarks as it wishes.

PRIOR ACTION(S): August 25, 2004 City Council Retreat

FISCAL IMPACT: None

CONTACT(S): None

ATTACHMENT(S): None

REVIEWED BY: lkp